



Homeland Security

Privacy Office, Mail Stop 0655

October 22, 2013

Shawn Musgrave
MuckRock
DEPT MR 6983
P.O. Box 55819
Boston, MA 02205-5819

Re: 2014-HQFO-00008

Dear Mr. Musgrave:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated October 10, 2013 and to your request for expedited treatment and a waiver of all assessable FOIA fees. Due to the October 1 - 16, 2013, lapse in appropriations leading to the closure of the government, this office received your request on October 17, 2013. Specifically, you requested any guidance, memo, protocol, directive or other document (or segment of another document) written by or for the Chief FOIA/Privacy Officer that provides departmental application of FOIA exemption 5 from 1990 to the day this request is processed.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves “circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(d)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(d)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. While you may be primarily engaged in the dissemination of information, you have not detailed with specificity why you feel there is an urgency to inform the public about guidance, memo, protocol, directive or other document (or segment of another document) written by or for the Chief FOIA/Privacy Officer that provides departmental application of FOIA exemption 5 from 1990 to the day this request is processed. Qualifying urgency would need to exceed the public’s right to know about

government activity generally. You also did not offer sufficient supporting evidence of an interest of the public greater than the public's general interest in guidance, memo, protocol, directive or other document (or segment of another document) written by or for the Chief FOIA/Privacy Officer that provides departmental application of FOIA exemption 5 from 1990 to the day this request is processed. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

As it pertains to your request for a fee waiver, after thoroughly reviewing your letter, I have determined that you have not presented a convincing argument that MuckRock is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your October 10, 2013 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because you failed to demonstrate any of the above factors. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to commercial requesters. As a commercial requester, you will be charged 10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer. We will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any further fees.

You have the right to appeal the determination to deny your request for expedited treatment and a fee waiver. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter** to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Mailstop 0655, Washington, D.C. 20528, following the procedures outlined in 6 C.F.R. § 5.9. Your envelope and letter should be marked "Freedom of Information Act Appeal." Copies of FOIA and the Department's FOIA regulations are available at www.DHS.gov/FOIA.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2014-HQFO-00008**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Pugh".

Amy Pugh
Senior FOIA Program Specialist